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Christopher L. Brooks, Deputy Commissioner

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Mr. David Kaiser
Federal Consistency Coordinator
Coastal Programs Division
OCRM-NOAA
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Silver Spring, Md. 20910

ANPR for rules affecting the
federal consistency review
process

Dear Mr. Kaiser

The South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management appreciates the opportunity to provide comments on the above referenced action. While the development of offshore oil and gas resources has never been an issue with our program, we understand and concur with the concern expressed by many other coastal programs that do utilize and depend upon this section of the program to administer the policies of their programs. We routinely use the federal consistency review process to address federal permits and licenses for consistency with our program, and have also used the process to address interstate permitting concerns along the Savannah River. We depend on this authority to implement our program and do not see the need to make any additional changes to the provisions at this time. As you are well aware, the consistency regulations were revised just last year and most of these issues and concerns were addressed during the lengthy public comment period when those changes were being considered. We do not feel that additional modifications are needed.

We fully support the ideas of using pre-application meetings or other consultation meetings to identify information needs and requirements, or issues of concern, prior to the formal process beginning. Many large projects are very complicated and involve many different issues that must be addressed in a thorough and comprehensive manner. By meeting well in advance of project submittal, the key issues of concern and information needs can be identified. It is our opinion that a great many of the timing issues can be resolved if adequate information is presented before the actual request is submitted and the public interest review process is started.

Furthermore it is our opinion that while a general list of information needs can be presented for most projects, (such as the size of the project, location, depth of water and identified use), but, most of the specific questions cannot be addressed until an actual project design application is submitted. The pre-application meeting should be able to identify these issues and information needs, and address these concerns without extending the review time. State programs, when consulting with prospective applicants can emphasize the purpose of the coastal zone management program and the information that they will require to make a consistency decision.

We also feel that it is inappropriate to establish dead lines for secretarial decisions. The actions of our permitting or certification decisions are subject to State law. These State processes dictate review periods, public notice requirements, public hearings, and the appeals process established under our administrative procedures act and the South Carolina coastal zone management program and permitting regulations.

We do not support the need for a general negative consistency determination as this would complicate the process and will not improve the efficiency of any consistency review. It is standard practice that any application that meets the submittal requirements for public notice must be reviewed and it's individual merits must be considered based upon our coastal zone management policies and our permitting regulations.

Regarding the need for a coastal affects test or a geographic determination for offshore actions, we feel that the existing regulations are very clear as to when a consistency determination is needed and how the effects test is to be interpreted. Likewise, the existing regulation clearly addresses how notice is to be provided through listing. Regulatory revisions are not needed.

Addressing the question of whether multiple federal approvals can be consolidated into a single federal action. It is our opinion that if all of the issues can be identified and all of the information needs addressed then consolidating consistency reviews is appropriate and allowable under the flexible nature of the existing regulation. The existing consistency rules already allow for consolidation and for expediency we prefer consolidated actions so that all of the impacts can be addressed in a comprehensive manner and that all cumulative impacts can be addressed.

Again we appreciate the opportunity to provide these comments and look forward to participating in the review process. If you have any specific questions regarding this issue please contact Ms. Debra Hernandez or Mr. Rob Mikell of my staff.

Sincerely,

Christopher L. Brooks
Deputy Commissioner

Cc: Mr. Richard Chinnis
Ms. Debra Hernandez
Mr. Robert D. Mikell